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[APPELLATE CIVIL JURISDICTION]
PEDLOW, J.
March 16, 1939.

GOH IT NEO (f) v. TAN TIAM HOCK.

[MALACCA MOTION No. 1 of 1939]

Courts Ordinance (Cap. 10), ss. 16 and 19—Calling for the proceedings of District Courts.

On the 10th February 1939, the Magistrate, Alor Gajah made an Order on Summons No. 1 of 1939, ordering the defendant Tan Tiam Hock to pay maintenance at the rate of $15 per month to the complainant who was the lawful wife of the defendant.

Held, that an order for the payment of a monthly allowance of maintenance of less than $100 comes under s. 19 of the Courts Ordinance.

Held also, that the order of the Magistrate was made by him in the capacity of Assistant District Judge and that therefore the High Court had appellate jurisdiction under s. 16 of the Courts Ordinance.

Chew Cheng Swee v. *Chan Chye Neo*, (1931) S.S.L.R. 187; 1 M.L.J. 5 (Court of Criminal Appeal) followed.

APPEAL.

Hill for complainant.

Jayaswal for defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

PEDLOW, J.—In view of the decision of the Court of Criminal Appeal in *Chew Cheng Swee* v. *Chan Chye Neo*, 1931, S.S.L.R. 187 (1 M.L.J. p. 5) I hold that the order of the learned Magistrate at Alor Gajah, the subject matter of the present motion, was made by him in his capacity of Assistant District Judge and that therefore this Court has appellate jurisdiction under section 16 of the Courts Ordinance.

I realize that this decision runs counter to the *obiter dicta* of Mr. Justice Terrell in the case I have referred to, but it seems to me to be the only conclusion one can come to from the substantive portion of the decision of the Court of Criminal Appeal.

I hold further that an order for a monthly amount of maintenance of less than $100 comes under section 19 of the Courts Ordinance.

I allow the motion before the Court and call for the record of the proceedings with a view to revision.

NOTES OF THE ORDER.

I decline to interfere with the maintenance order of $15 per month from the 10th February, 1939 made in favour of the complainant Goh It Neo against the defendant Tan Tiam Hock.

I think there was abundant evidence that the complainant was at the very least a secondary wife of the defendant. He is presumably a Chinese born in China and under the old Chinese law the first woman a man marries is his real wife and he cannot have a secondary wife in advance, though it is true that the Courts in the Colony have recognized a departure from Chinese custom in this respect.

I wish to congratulate the learned Magistrate on his very well written and careful grounds of judgment on the question of marriage. He gave a right decision, in my opinion, and there was abundant evidence on which he could come to that decision.

Two other points arise. On the question of means the defendant admits that he is a property owner but has now sought to prove that he cannot pay the sum of $15 a month. It is of course open to him to take out a summons to vary the order against him on the ground that his means no longer enable him to pay the amount of the order, but I decline to interfere on the evidence at present before the Court.

The other point is the question of adultery. Before the learned Magistrate he only alleged adultery in 1919, i.e. 20 years ago. He did not call his elder brother to prove this adultery. He alleges in his affidavit of the 13th March, which I do not accept, that the learned Magistrate threatened to put him in the lock-up if he talked much. I do not believe that the learned Magistrate refused to allow him to call any witnesses he wanted to.

I would point out that it is open to the appellant at any time to take out a summons to have the maintenance order set aside if he can prove under section 37 (6) of the Minor Offences Ordinance that his wife is living in adultery. I am very strongly inclined to think that the suggestion of adultery is a pure invention—an invention for the purpose of this case. If his wife had been committing adultery with his elder brother it seems to me unthinkable that this woman would have been allowed to take charge of the ancestral tablets of the man's family. I speak with some knowledge of Chinese customs and manners as I am an M.C.S. Chinese Cadet and a Government expert, for what that expert knowledge is worth, in such matters. I say quite frankly that it seems to me most improbable, had this woman been living in incestuous adultery, that the defendant would have allowed her to take charge of the ancestral tablets and ashes of the family. However, that is a matter which he can raise at any time before the learned trial Magistrate or before any other Magistrate who succeeds the present District Officer.

The maintenance order is confirmed and there will be no order as to costs.

I thank both counsel for their assistance as *amici curiae* in this case.

Maintenance order confirmed.